IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6496 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARESHSING BRIJLAL DHIMAN

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 6496 of 2004

MR KISHOR M PAUL for Petitioner No. 1

MR MS RAO for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/07/2004

ORAL JUDGEMENT

Rule. Mr.M.S.Rao, learned advocate appearing for the respondent waives service of notice of rule. At the joint request, the petition is taken up for final

disposal today.

2. In the present petition, the petitioner has challenged the order dated 30th June 2003 passed by the respondent in exercise of powers under section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act ("the said Act" for short). It is the case of the petitioner that though notices were issued by the respondent before passing the said order, the petitioner could not participate in the proceedings due to closure of the establishment for some time and other unavoidable circumstances. By order dated 11.6.2004, the petitioner was directed to deposit an amount of Rs.1 lac within a period of four weeks from the said date. I am informed that the petitioner has actually deposited the amount as directed.

3. From the perusal of the record, I find that the impugned order dated 30th June 2003 was passed by the respondent without participation of the petitioner. In my opinion, the petitioner is required to be given an opportunity to put forth its case before the Authority. This, however, cannot be unconditional and the petitioner is directed to deposit with the respondent 25 per cent of the amount demanded inclusive of Rs.1 lac which the petitioner has already deposited. The shortfall shall be deposited within a period of four weeks from today.

4. The order dated 30th June 2003 is quashed and set aside and the matter is remanded to the respondent authority for passing fresh order after giving an opportunity of hearing to the petitioner. In view of the quashing of order dated 30th June 2003, subsequent proceedings for execution of the same would obviously not survive. The petitioner shall also pay cost of Rs.5,000/- to the respondent.

5. In view of the above directions, the petition stands disposed of. Rule is made absolute to the above extent.

(Akil Kureshi, J.)
(vjn)